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LAWS AND REGULATIONS

PROMULGATED TO GIVE EFFECT TO THE PROVISIONS OF THE INTERNATIONAL TREATIES ON NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

In accordance with the relevant articles of the international treaties on narcotic drugs and psychotropic substances, the Secretary-General has the honour to communicate the following legislative text.

FEDERAL REPUBLIC OF GERMANY

Communicated by the Government of the Federal Republic of Germany

NOTE BY THE SECRETARIAT

(a) Some editing of texts may be done by the Secretariat in the interest of clarity. In this connection, words in square brackets [ ] have been added or changed by the Secretariat.

(b) Only passages directly relevant to the control of narcotic drugs or psychotropic substances have been reproduced in this document. Non-relevant parts of laws and regulations have been deleted by the Secretariat; such deletions are indicated by [...].

ACT TO REGULATE THE TRAFFIC IN NARCOTICS [OF 10 MARCH 1994, AS AMENDED UP TO APRIL 1996] (NARCOTICS ACT) [1994 AS AMENDED UP TO 1996]

*Note by the Secretariat: Save for the Schedules I to III, which were translated by the Secretariat, this document is a direct reproduction of the text translated from German into English, communicated to the Secretariat by the Government of the Federal Republic of Germany.

Act to Regulate the traffic in Narcotics
[of 10 March 1994, as amended up to April 1996]
(Narcotics Act) [1994 as amended up to 1996]

In the version of the notification of 10 March 1994 (Federal Law Gazette 1994 I p. 358), lastly amended by Article 1 of the Act of 4 April 1996 (Federal Law Gazette Part I p. 582)

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Chapter I
Definition of terms

Section 1
Narcotics

(1) Narcotics within the meaning of this Act are the substances and preparations listed in Schedules I to III.

(2) The Federal Government, with the approval of the Bundesrat, is authorised, upon the hearing of experts, to amend or supplement by statutory order Schedules I to III as is necessary

1. on the basis of scientific knowledge due to the effect of a substance, especially in view of the creation of an addiction,
2. due to the possibility of producing narcotics from a substance or by use of a substance or
3. for the safety or control of the traffic in narcotics or other substances or preparations owing to the extent of abuse and to the indirect or direct danger to health.

On the statutory order, pursuant to the first sentence, specific substances or preparations can, in whole or in part, be exempted from the application of this Act or a statutory order issued on the basis of this Act, as long as the safety and control of the traffic in narcotics remain guaranteed.

(3) In urgent cases concerning the safety or control of the traffic in narcotics, the Federal Minister of Health is authorised, by statutory order and without the consent of the Bundesrat, to include in Schedules I to III substances and preparations which are not medicaments, when such a step is necessary owing to the extent of abuse and the indirect or direct danger to health. A statutory order issued on the basis of this provision shall lose its validity after the expiration of one year.

(4) The Federal Minister of Health (Federal Minister) is authorised, by statutory order and without the consent of the Bundesrat, to amend Schedules I to III or the statutory orders issued on the basis of this Act insofar as this is required due to amendments of the Schedules to the Single Convention on Narcotics, 1961, in the version as promulgated on 4 February 1977 (Federal Law Gazette II, p. 111) and the Convention on Psychotropic Substances, 1971, (Federal Law Gazette 1976 II, p. 1477) (International Drug Conventions) in their respective versions, binding on the Federal Republic of Germany.

Section 2
Other definitions

(1) Within the meaning of this Act

1. a substance
   is a plant, a part of a plant or a plant component in a processed or unprocessed condition as well as a chemical compound and its esters, ethers, isomers, molecule compounds and salts - crude or purified - as well as their natural mixtures and solutions;

2. a preparation,
   without regard to its aggregate condition, is a mixture of substances or the solution of one or several substances except the natural mixtures and solutions;
3. an exempt preparation
   is a preparation designated in Schedules I to III which, in whole or in part, is exempted from the provisions governing narcotics;
4. production
   is extraction, manufacture, preparation, treatment or process, purification or conversion.

(2) Equivalent to the import or export of a narcotic is any other transfer into or from the territorial sphere of application of this Act.

Chapter II
Licence and licensing procedure

Section 3
Licence for the trade with narcotics

(1) A licence of the Federal Institute for Pharmaceuticals and MedicalProducts is required by whoever

1. wishes to cultivate narcotics, produce narcotics, trade in them or to import, export, deliver, sell, otherwise bring them into commercial traffic or acquire them without engaging in their trade or
2. wishes to produce exempt preparations (Section 2, subsection 1, No 3).

(2) The Federal Institute for Pharmaceuticals and Medical Products can issue a licence for the narcotics designated in Schedule I, by way of exception, only for scientific or other purposes which are in the public interest.

Section 4
Exemptions from the obligation to obtain a licence

(1) A licence pursuant to Section 3, subsection 1, is not required by whoever

1. as part of the operation of a public pharmacy or a pharmacy at a hospital
   a) produces narcotics designated in Schedule II or III or preparations there exempted,
   b) acquires narcotics designated in Schedule II or III,
   c) supplies narcotics designated in Schedule III on the basis of a prescription from a physician, dentist or veterinarian or
   d) returns narcotics designated in Schedule II or III to holders of a licence for the acquisition of these narcotics or delivers them to the successor in the pharmacy,
   e) takes delivery of narcotics specified in Schedule I, II or III for the purpose of analysis, forwarding to a place authorised for analysis of narcotics or destruction.
2. as part of the operation of a veterinary dispensary
   a) produces narcotics or exempt preparations designated in Schedules II and III,
   b) acquires narcotics designated in Schedule II or III
   c) supplies narcotics designated in Schedule III for an animal treated by him or
   d) returns narcotics designated in Schedule II or III to holders of a licence for the acquisition of these narcotics or supplies them to the successor in the veterinary dispensary,

3. acquires narcotics designated in Schedule III
   a) on the basis of prescriptions from physicians, dentists or veterinarians or
   b) to be administered to an animal by a person who treats this animal and operates a veterinary dispensary,
4. exports or imports narcotics designated in Schedule III
   a) as a physician, dentist or veterinarian as part of cross-border services or
   b) purchased them on the basis of prescriptions from physicians, dentists or veterinarians and exports or imports them as travel necessities or
5. on a commercial basis
   a) takes part in the transportation of narcotics between authorised participants in the trade with narcotics, or assumes the storage and safekeeping of narcotics in connection with such transportation or accepts them for an authorised participant in the trade with narcotics or
   b) takes care of or arranges the shipment by others of narcotics between authorised participants in the traffic in narcotics.

(2) Federal and Länder authorities as well as the authorities entrusted by them with the examination of narcotics do not require a licence pursuant to Section 3 for the sphere of their official duty.

(3) Whoever, purusant to subsection 1, Nos 1 and 2, does not require a licence and wishes to participate in the traffic with narcotics, has to notify the Federal Institute for Pharmaceuticals and Medical Products first. The notification must include

1. the name and addresses of the notifying person as well as of the pharmacy or the veterinary dispensary,
2. the date of issue and the governmental authority issuing the licence for the pharmacy or the licence to practice as a veterinarian and
3. the date of commencement of participation in the traffic in narcotics.

The Federal Institute for Pharmaceuticals and Medical Products shall inform the competent highest Land governmental authority without delay of the contents of the notifications insofar as they concern veterinary dispensaries.

Section 5
Refusal of the licence

(1) The issue of a licence pursuant to Section 3 is to be refused if

1. it is not guaranteed that in the processing plant and, so far as there are other processing plants in distant municipalities, in each of these plants, one person is appointed to be responsible for compliance with the provisions governing narcotics and orders of the control agencies (responsible person); the applicant himself can be appointed a responsible person,
2. the designated responsible person does not have the required expertise or is incapable of permanently complying with the obligations incumbent upon him,
3. facts exist raising doubts as to the reliability of the responsible person, the applicant, his legal representative or, in case of legal persons or associations without legal capacity, persons authorised concerning representation or management of the plant pursuant to the law, articles of association or deed of partnership,
4. suitable rooms, facilities and protection for the participation in trade with narcotics or the production of exempt preparations are not available,
5. the safety or control of the trade with narcotics or the production of exempt preparations for reasons other than those outlined in Nos 1 to 4 is not guaranteed,

6. the nature and purpose of the traffic for which application has been made do not comply with the purpose of this law, namely to secure the required medical supply of the population, but at the same time to preclude insofar the abuse of narcotics or the improper production of exempt preparations as well as the development or maintenance of an addiction to narcotics or
7. if there is an objection to the submitted application documents and a defect is not remedied within the set time limit (Section 8, subsection 2).

(2) The licence can be refused if it conflicts with the implementation of the international drug agreements or resolutions, orders or recommendations of intergovernmental institutions of drug control or if this is imperative due to legal acts of the organs of the European Communities.

Section 6
Expert knowledge

(1) The proof of the required expertise (Section 5, subsection 1, No 2) shall be supplied,

1. with respect to the producer of narcotics or exempt preparations which are medicines, by proving the expertise as head of production or head of supervision as pursuant to the provisions of the Pharmaceuticals Act,
2. with respect to the production of narcotics which are not medicines, by the certificate of an examination passed upon completion of a scientific university education in biology, chemistry, pharmacy, human or veterinary medicine and by the verification of practical work involving the production or testing of narcotics for at least one year,
3. in the event of use for scientific purposes, by the certificate of an examination passed upon completion of a scientic university education in biology, chemistry, pharmacy, human or veterinary medicine and
4. in all other cases, by the certificate of completed vocational training as a merchant in wholesale and foreign trade in the fields of chemistry or pharmacy and by verification of practical work in the traffic in narcotics for at least one year.

(2) The Federal Institute for Pharmaceuticals and Medical Products can, in a specific case, deviate from the requirements for the expertise designated in subsection 1, if the safety and control of the traffic in with narcotics or of the production of exempt preparations are guaranteed.

Section 7
Application

The application for the issue of a licence pursuant to Section 3 is to be submitted in duplicate to the Federal Institute for Pharmaceuticals and Medical Products which shall transmit one copy to the competent highest Land governmental authority. The following information and documents must be attached to the application:

1. the names, first names or the firm and the addresses of the applicant and the responsible persons,
2. with regard to the responsible persons, the proof of the required expertise and statements as to whether and on the basis of what circumstances they can permanently meet the obligations incumbent upon them,

3. a description of the location of the processing plants according to place (if possible, designation of plot), street, house number, building and part of the building, as well as the type of construction of the building,
4. a description of the existing security measures against removal of narcotics by unauthorised persons,
5. the nature of the trade with narcotics (Section 3, subsection 1),
6. the nature and the probable annual quantity of narcotics to be produced or required,
7. in the case of production (Section 2, subsection 1, No 4) of narcotics or exempt preparations, a short description of the production process indicating the kind and quantity of the initial substance or initial preparations, intermediate or final product, even if initial substances or initial preparations, intermediate or final products are not narcotics; in case of preparations not divided into portions, additionally the percentages by weight, in case of preparations divided into portions, the weight of the narcotics contained in each such portion and
8. in the case of use for scientific or other purposes in the public interest, an explanation of the purpose pursued with citation of the pertinent scientific literature.

Section 8
Decision

(1) The Federal Institute for Pharmaceuticals and Medical Products shall, within three months of receipt of the request, decide on the issue of the licence. It shall notify the competent highest Land governmental authority of the decision without delay.

(2) If the Federal Institute for Pharmaceuticals and Medical Products gives the applicant the opportunity to remedy defects in the request, the time limit provided for in paragraph 1 will be suspended until removal of the defects or until expiration of the time limit set for removal of the defects. The suspension shall commence on the day on which the request for remedy is served on the applicant.

(3) The holder of the licence has to inform the Federal Institute for Pharmaceuticals and Medical Products without delay of any change of the information designated in Section 7. In the case of expansion with reference to the kind of narcotics or the trade with narcotics as well as in the case of changes in respect of the person holding the licence or the location of the processing plants except inside a building, a new licence is to be applies for. In other cases the licence will be changed. The competent highest state governmental authority will be informed of the change of the licence without delay.

Section 9
Restrictions, time limit, terms and conditions

(1) The licence shall, to ensure the safety and control of the traffic in narcotics or of the production of exempt preparations, be restricted to the extent necessary in each case. It must regulate in particular

1. the kind of narcotics and in particular of the traffic in narcotics,
2. the probable annual quantity and the stock of narcotics,
3. the location of the processing plants and
4. the production process and the initial, intermediate and final products originating therefrom, even if they are not narcotics.

(2) The licence

1. can have a time limit, be issued with certain terms or be subject to conditions or
2. can, after its issue with regard to subsection 1, second sentence, be changed or be provided with other restrictions or conditions

if this is required for the safety or control of the traffic in narcotics or for the production of exempt preparations or if the licence conflicts with implementation of international drug conventions or resolutions, orders or recommendations of intergovernmental institutions of drug control or if this is imperative due to legal acts of the organs of the European Communities.

Section 10
Withdrawal and revocation

(1) The licence can also be revoked if it has not been used within a period of two calendar years. The time limit can be extended if a justified interest is substantiated.

(2) The competent highest Land governmental authority will be notified of the withdrawal or revocation of the licence without delay.

Chapter III.
Obligations concerning the traffic in narcotics

Section 11
Import, export and transit

(1) Whoever wishes to import or export narcotics in an individual case requires the approval of the Federal Institute for Pharmaceuticals and Medical Products, besides the licence required pursuant to Section 3. Narcotics may be transported through the territorial sphere of application of this Act only under customs control, not remaining in it any longer than is necessary for the transportation or transfer, and without the narcotics at any time during the carriage being actually available to the person carrying out the transportation or to a third person. Exempt preparations may not be exported to countries which have prohibited the import.

(2) The Federal Government is authorised, by statutory order, without the consent of the Bundesrat, to regulate the procedure for the issue of the licence and to lay down provisions on import, export and transit, insofar as this is required for the safety or control of the traffic in narcotics, for the implementation of the international drug conventions or legal acts of the organs of the European Communities. In particular

1. the import, export or transit can be limited to certain narcotics and quantities, and their import from and export to as well as the transit through certain countries can be prohibited,

2. exceptions to subsection 1 for holiday traffic and shipment of samples within the context of international cooperation can be permitted,
3. regulations can be issued for the carrying of narcotics by physicians, dentists an veterinarians as part of cross-border services and
4. the form, contents, preparations, issue and safekeeping of the official forms to be used can be determined.

Section 12
Supply and acquisition

(1) Narcotics may be supplied only to
1. persons or associations who are in possession of a licence for acquisition pursuant to Section 3 or who operate a pharmacy or veterinary dispensary,
2. the authorities or institutions designated in Section 4, subsection 2, or Section 26,
3. (dropped)

(2) The person supplying narcotics shall have to report to the Federal Institute for Pharmaceuticals and Medical Products, except in the cases referred to in Section 4, subsection 1, No 1 (e), without delay each individual act of supply by indicating the buyer and kind and quantity of the narcotic. The buyer shall have to confirm to the supplier the receipt of the narcotics.

(3) Subsections 1 and 2 shall not apply with regard to
1. the supply of narcotics designated in Schedule III
   a) on the basis of a prescription from a physician, dentist or veterinarian within the context of the operation of a pharmacy,
   b) within the context of the operation of a veterinary dispensary for an animal treated by the person operating such a dispensary,
2. the export of narcotics and
3. the supply and acquisition of narcotics between the authorities or institutions designated in Section 4, subsection 2, or Section 26.

(4) The Federal Minister[1] shall be authorised, by statutory order, without the consent of the Bundesrat, to regulate the procedure regarding notification and confirmation of receipt, especially the form, contents, issue and safekeeping of the official forms to be used insofar as this is necessary for the safety or control of the traffic in narcotics.

Section 13
Prescription and supply on prescription

(1) The narcotics designated in Schedule III may be prescribed only by physicians, dentists and veterinarians and may be prescribed, administered or put at the disposal of another for immediate use as part of medical, dental or veterinary treatment, including the medical treatment of narcotic drug addiction, only if there is a reason for their use on or in the human or animal body. A reason for such use shall not exist if the intended purpose can be attained in any other way. The narcotics designated in Schedules I and II may not be prescribed, administered or put at the disposal of another for immediate use.

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1 translator's note: Federal Minister of Health

(2) The narcotics prescribed pursuant to subsection 1 may be supplied only within the context of operation of a pharmacy and on presentation of the pescription. Only narcotics designated in Schedule III may be supplied within the context of operation of a veterinary dispensary and only for application to an animal treated by the person operating the veterinary dispensary.

(3) The Federal Government is authorised by statutory order, with the consent of the Bundesrat, to regulate the prescription of narcotics designated in Schedule III, their supply on the basis of a prescription and the recording of their whereabouts and the stocks of physicians, dentists, in pharmacies, veterinary dispensaries, hospitals and animal hospitals, insofar as this is required for the safety or control of the traffic in narcotics. In particular

1. the prescription can be limited to certain preparations, purposes or quantities,
2. the form, content, preparation, issue, safekeeping and return of the official form to be used for the prescription, as well as the records concerning whereabouts and stock can be laid down and
3. exceptions to the provisions of Section 4, subsection 1 No 1 (c), regarding the equipment of merchant vessels can be issued.

Section 14
Marking and advertising

(1) In the traffic in narcotics, the narcotics are to be marked by using the short designation listed in the Schedules. The marking has to be made in clearly legible writing, in the German language and in a durable manner.

(2) Additionally, the marking must further include

1. the percentage by weight, in the case of crude narcotics not purified and narcotics not divided into portions, and, in the case of narcotics divided into portions, the weight of the pure substance contained in the narcotic,
2. on receptacles for narcotics and, insofar as used, on the outside wrapper of substances and preparations not divided into portions, the weight contained therein; in the case of preparations divided into portions, the number of pieces contained therein; this shall not apply to storage receptacles kept at scientific laboratories or to small receptacles and ampules intended to be used for supply.

(3) Subsections 1 and 2 shall not apply to storage receptacles in pharmacies and veterinary dispensaries.

(4) Subsections 1 and 2 shall also apply accordingly to the designation of narcotics in catalogues, price lists, advertisements or similar printed material intended for experts participating in the traffic in narcotics.

(5) Advertising for narcotics designated in Schedules II and III shall be permitted only within trade and industry specialist circles as well as in respect of persons and associations operating a pharmacy or veterinary dispensary and, for narcotics designated in Schedule III, also in respect to physicians, dentists an veterinarians.

Section 15
Safety measures

Whoever participates in the traffic in narcotics shall have to keep the narcotics in his possession in a separate place andsecure them against unauthcrised removal. The Federal Institute for Pharmaceuticals and Medical Products shall be able to order safety measures insofar as is required by the kind and extent of the traffic in narcotics, the degree of danger or the quantity of narcotics.

Section 16
Destruction

(1) The owner of narcotics no longer suitable for traffic shall have to destroy them at his expense in the presence of two witnesses in a manner excluding even partial recovery of the narcotics a well as ensuring the protection of human beings and the environment against harmful effcts. A written record of the desruction shall be made and retained for three years.

(2) The Federal Institute for Pharmaceuticals and Medical Products, which in the cases referred to in Section 19, subsection 1, third sentence, is the competent Land governmental authority, shall be able to request the owner to send the narcotics to these authorities for destruction at his own expense. If there is no owner or if he cannot be traced or if the owner does not comply with his obligation to destroy the narcotics or with the request to send in the narcotics, pursuant to the first sentence, within a previously determined time limit of three months, the authorities designated in the first sentence shall take the measures necessary for destruction. The owner or possessor of the narcotics shall be obliged to surrender the narcotics to the persons entrusted with their destruction or to tolerate their removal.

(3) Subsection 1 and subsection 2, first and third sentences, shall apply accordingly, if the owner wishes to dispose of narcotics no longer needed.

Section 17
Records

(1) The holder of a licence pursuant to Section 3 shall be obliged to keep constant records as follows, separately for each processing plant and each narcotic, and for each acquisition and despatch:

1. the date,
2. the name or firm and the address of the supplier or the recipient or any other origin or whereabouts,
3. the incoming or despatched quantity and the stock resulting therefrom,
4. in the case of cultivation, additionally the cultivated area according to location and size as well as the date of sowing,
5. in the case of production, additionally the designation of the narcotics used or produced, the substances not subject to the Act or the exempt preparations according to kind and quantity and
6. in cases of supply of exempt preparations by their producer, additionally the name or the firm and the address of the recipient.

In lieu of the records designated in No 6, the copies of the initial invoices in which the exempt preparations are marked can be filed in sequence according to the date of the invoice.

(2) The quantities to be indicated in the records or invoices are

1. the weight, in case of substances and preparation not divided into portions, and
2. the number of pieces in the case of preparations divided into portions.

(3) The records or copies of invoices are to be kept separately for three years, reckoned from the last entry or from the date of the last invoice.

Section 18
Reports

(1) The holder of a licence pursuant to Section 3 shall be obliged to report to the Federal Institute for Pharmaceuticals and Medical Products, separately for each processing plant and for each narcotic, the respective quantity which

1. was produced by cultivation, by indicating the cultivated area according to location and size,
2. was produced, broken down according to the initial substances,
3. was used for the production of other narcotics, broken down according to these narcotics,
4. was used for the production of substances not falling under this law, broken down according to these substances,
5. was used for the production of exempt preparations, broken down according to these preparations,
6. was imported, broken down according to exporting countries,
7. was exported, broken down according to importing countries,
8. was acquired,
9. was supplied,
10. was destroyed,
11. was used for purposes other then those stated in Nos 1 to 10, broken down according to the respective purposes for use and
12. existed as stock at the end of the respective calendar half-year.

(2) The quantities to be indicated in the reports are

1. the weight in the case of substances and preparations not divided into portions and
2. the number of pieces in the case of preparations divided into portions.

3) The reports pursuant to subsection 1, Nos 2 to 12, are to be submitted to the Federal Institute for Pharmaceuticals and Medical Products by 31 January and 31 July for the past calendar half year and the report pursuant to subsection 1, No 1, by 31 January for the past calendar year.

(4) The official forms issued by the Federal Institute for Pharmaceuticals and Medical Products are to be used for the reports designated in subsection 1.

Chapter IV
Surveillance

Section 19
Executive authority

(1) The traffic in narcotics as well as the production of exempt preparations shall be subject to surveillance by the Federal Institute for Pharmaceuticals and Medical Products. This agency shall also be competent for the printing, issue and evaluation of the official forms provided for the prescription of narcotics. The traffic in narcotics involving physicians, dentists and veterinarians and in pharmacies, veterinary dispensaries, hospitals and animal hospitals shall be subject to the surveillance of the competent authorities of the Länder.

(2) The Federal Institute for Pharmaceuticals and Medical Products shall be at the same time the special administrative authority within the meaning of the international drug conventions.

(3) The cultivation of fibre hemp in the meaning of (d) of the Exceptional Regulation on cannabis (marihuana) in Annex I Part B shall be subject to monitoring by the Federal Institute for Agrigulture and Nutrition. Sections 9, 10 and 10 a of the Ordinance on the Grant of Area-Related Aids and Storage Aids shall apply mutatis mutandis to the monitoring of flax and hemp.

Section 20
Special authorisation
in a state of tension or in a state of defence

(1) The Federal Government shall be authorised by statutory order without the consent of the Bundesrat to amend this Act or the statutory orders issued on the basis of this Act for defence purposes in order to secure the medical supply of narcotics for the population, if the safety and control of the trade with narcotics or the production of exempt preparations remain assured. In particular

1. duties of the Federal Institute for Pharmaceuticals and Medical Products pursuant to this Act and statutory orders issued on the basis of this Act shall be able to be transferred to the Federal Minister,
2. the traffic in narcotics and the production of exempt preparations shall be able to be adapted to the special requirements designated in the first sentence and
3. notifications of the stocks of
   a) narcotics,
   b) exempt preparations and
   c) initial substances or preparations, even if these are not narcotics, required for the production of narcotics

shall be able to be ordered. Further, the person authorised to dispose of the supplies designated in the second sentence, No 3, shall be able to be obliged in the statutory order to supply them to certain persons or authorities.

(2) The statutory order pursuant to subsection 1 shall be applicable only pursuant to the provision of Article 80a, paragraph 1 of the Basic Law.

(3) (dropped)

Section 21
Cooperation of other governmental authorities

(1) The Federal Ministry of Finance and the customs offices designated by it shall assist in the surveillance of the import, export and transit of narcotics.

(2) The Federal Ministry of Finance may, in concert with the Federal Ministry of the Interior, entrust the officers of the Federal Border Guard entrusted with the task of protecting Federal borders under Section 2 of the Federal Border Guard Act, and in concert with the Bavarian State Minister of the Interior the officers of the Bavarian Border Police, with the performance of duties which, pursuant to subsection 1, are incumbent upon the customs offices. If the officers designated in the first sentence perform these duties, Section 67, subsection 2 of the Federal Border Guard Act shall apply accordingly.

(3) Where violations of prohibitions and restrictions of this Act resulting from clearance are suspected, the assisting governmental authorities shall inform the Federal Institute for Pharmaceuticals and Medical Products without delay.

Section 22
Measures of surveillance

(1) The persons entrusted with the surveillance shall be authorised

1. to examine documents relating to the traffic in narcotics, or to the production or to the bringing into traffic following such production of exempt preparations, and to prepare copies or photostats therefrom insofar as they can be of importance for the safety and control of the traffic in narcotics or the production of exempt preparations,
2. to request all necessary information from natural and legal persons and associations without legal capacity,
3. to enter and inspect premises, buildings, parts of buildings, facilities and means of transportation in which the traffic in narcotics or through which the production of exempt preparations is carried out, whereby the authorised persons have to satisfy themselves that the provisions governing the traffic in narcotics or the production of exempt preparations are complied with. To prevent imminent dangers to public safety and order, especially if a frustration of the control of the traffic in narcotics or the production of exempt preparations is to be feared, these premises may also be entered, working outside business hours, as also may rooms serving as living quarters; insofar, the basic right to the inviolability of the home (Article 13 of the Basic Law), shall be restricted. Insofar as industrial production plants and wholesale firms are involved, the inspections, as a rule, shall be performed every two years,
4. to give temporary orders insofar as this is imperative for the prevention of imminent dangers to the safety and control of the traffic in narcotics or the production of exempt preparations. For the same purpose they shall also, in whole or in part, prohibit the further participation in the traffic in narcotics or the further production of exempt preparations and place under official seal the stocks of narcotics or stocks of exempt preparations. The competent governmental authority (Section 19, subsection 1), shall within one month of the issuance of the temporary order, have to decide on it with final effect.

(2) The competent governmental authority shall also be able to order in writing measures pursuant to subsection 1, Nos 1 and 2.

Section 23
Taking of samples

(1) As necessary for the implementation of the provisions governing the traffic in narcotics or the production of exempt preparations, the persons entrusted with the surveillance shall be authorised, on condition that they issue a receipt, to request or take samples of their choice for the purpose of examination. Insofar as this is not expressly waived, a part of the sample or, if the sample is not divisible into parts of the same quality or not without endangerment of the purpose of the examination, a second piece of the same kind as the sample taken is to be left.

(2) Samples being left are to be officially secured or sealed. They are to be marked with the date of the sample taken and the date upon the expiration of which the securing or sealing are considered lifted.

(3) Insofar as this is not expressly waived, adequate monetary compensation shall be made for samples taken.

Section 24
Obligation to tolerate measurers and to cooperate

(1) Each participant in the traffic in narcotics or each producer of exempt preparations shall be obliged to tolerate the measures pursuant to Sections 22 and 23 and to support the persons entrusted with the surveillance in the performance of their duties, in particular to indicate to them upon request those facilities where the traffic with narcotics or the production of exempt preparations takes place, to permit access to enclosed premises, buildings, rooms, containers and receptacles, to supply information as well as to make possible an examination of records and the taking of samples.

(2) The person obliged to supply information shall be able to refuse information in reply to such questions as would expose him or one of his dependents designated in Section 383, subsection 1, Nos 1 to 3, Code of Civil Procedure, if answered to the danger of prosecution or to proceedings pursuant to the Act governing Regulatory Offences.

Section 24 a
Notification of cultivation of fibre hemp

The cultivation of fibre hemp in the meaning of (d) of the Exceptional Regulation on cannabis (marihuana) in Annex I Part B is to be notified in triplicate to the Federal Institute for Agriculture and Nutrition by 15 June of the year of cultivation in order that the latter may perform its tasks specified under section 19 subsection 3. The official form supplied by the Federal Institute for Agrigulture and Nutrition is to be used for the report. The report must contain:

1. the surname, first names and the address of the farmer, in the case of legal entities the name of the enterprise running the farm and the legal representative,

2. the membership and cadaster numbers assigned by the competent professional association,

3. the species which has been sowed, including official labels,

4. the area sowed in hectares and ares, stating the cadaster number; instead of the cadaster number the area sowed may be characterised by the bounds, the layout and the plot or other information recognised by the Federal Institute for Agriculture and Nutrition.

The Federal Institute for Agrigulture and Nutrition shall send a copy of the notification signed by it to the applicant without delay. Furthermore, it shall send a copy of the notification to the competent police authorities and public prosecution offices at their request if this is necessary in order to prosecute criminal offences under this Act. If the Federal Institute for Agriculture and Nutrition has received indications that the cultivation of fibre hemp does not correspond to the preconditions set out in (d) of the Exceptional Regulation on Cannabis (marihuana) in Annex I Part B, it shall notify this to the public prosecution office with local jurisdiction.

Section 25
Costs

(1) The Federal Institute for Pharmaceuticals and Medical Products shall charge costs for its official acts, examinations and investigations pursuant to this Act and the statutory orders issued on the basis of this law (fees and expenses).

2) The Federal Minister[1] shall be authorised, by statutory order, without the consent of the Bundesrat, to further define the circumstances in which fees have to be paid, and in so doing, to provide for fixed or basic rates.

Chapter V
Provisions for governmental authorities

Section 26
Federal Armed Forces, Federal Border Guard, Security Alert Police and Protection of the Civilian Population

(1) This Act, with the exception of the provisions concerning the licence pursuant to Section 3, shall be applied accordingly to facilities serving the supply of the Federal Armed Forces and the Federal Border Guard with narcotics, as well as to the stock of narcotics for the protection of the civilian population designated in Schedule II or III.

(2) As regards the Federal Armed Forces and the Federal Border Guard, the execution of this Act and the surveillance of the traffic in narcotics shall be incumbent upon the respective authorities and experts of the Federal Armed Forces and the Federal Border Guard. As regards the protection of the civilian population, the execution of this Act shall be incumbent upon the Federal and Land governmental authorities competent for the supply of medical material.

(3) The Federal Minister of Defence can, for his area of responsibility, in concert with the Federal Minister[1], permit in individual cases exceptions to this Act and the statutory orders issued on the basis of this Act insofar as the international drug conventions do not countervail and pressing reasons of defence require this.

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1 translator's note: Federal Minister of Health

(4) This Act, with the exception of the provisions concerning the licence pursuant to Section 3, shall be applied accordingly to the facilities serving the narcotics supply of the security alert police of the Länder.

(5) (dropped)

Section 27
Reports and Information

(1) The Federal Criminal Office shall report annually to the Federal Institute for Pharmaceuticals and Medical Products, by 31 March for the past calendar year, the seizures of narcotics according to kind and quantity which have become known to it as well as, where appropriate, the further use made of the narcotics. In the case of further use, the name or the firm and address of the buyer are to be indicated.

(2) Upon request, the government authorities designated in Section 26 have to supply information to the Federal Institute for Pharmaceuticals and Medical Products concerning the traffic in narcotics in their areas of operation, insofar as this is required for the implementation of the international drug conventions.

Section 28
Annual report to the United Nations

(1) The Federal Government shall prepare an annual report by 30 June, for the past calendar year, for the Secretary General of the United Nations concerning the implementation of the international drug conventions in a form determined by the United Nation Drug Commission(a) The competent authorities of the Länder shall cooperate in the compilation of the report and submit their contributions to the Federal Institute for Pharmaceuticals and Medical Products by 31 March for the past calendar year. Insofar as the information required in the form cannot be ascertained, it is to be estimated.

(2) The Federal Government is authorised, by statutory order, with the consent of the Bundesrat, to specify the persons and authorities obliged to supply reports, namely lists of statistics, other data and other information required for the implementation of the international drug conventions. In the statutory order, provisions can be made as to the manner and kind, form, time and the recipient of the reports.

Chapter VI
Criminal offences and regulatory offences

Section 29
Criminal offences

(1) A term of imprisonment of up to five years or a fine shall be imposed on anyone who

1. in an unauthorised fashion cultivates, produces and trades with narcotics, or who imports, exports, sells, supplies, otherwise brings into traffic, acquires or procures narcotics in any other way without trading with them,
2. produces an exempt preparation (Section 2, subsection 1, No 3) with a licence pursuant to Section 3, subsection 1, No 2,

(a) United Nations Commission on Narcotic Drugs

3. possesses narcotics, without at the same time being in possession of written permission for their acquisition,
4. (dropped)
5. contrary to Section 11, subsection 1, third sentence, carries narcotics in transit,
6. contrary to Section 13, subsection 1,
   a. prescribes narcotics
   b. administers or makes available narcotics for direct use,
7. contrary to Section 13, subsection 2, supplies narcotics in a pharmacy or in a veterinary dispensary,
8. contrary to Section 14, subsection 5, advertises for narcotics,
9. gives incorrect or incomplete information to obtain a prescription of a narcotic for himself, for another or for an animal,
10. communicates publicly or out of selfish motives an opportunity for illicit use, acquisition or illicit supply of narcotics, procures for or grants such opportunity to another or misleads him into the illicit use of narcotics, or
11. (dropped)
12. publicly, at a meeting or by the dissemination of written material (Section 11 subsection 3 of the Criminal Code) calls for the use of narcotics which have not been prescribed in the permitted manner,
13. puts at the disposal of another money or other items of property for the commission of an unlawful act pursuant to Nos 1, 5, 6, 7, 10 or 12.
14. acts in contravention of a statutory order pursuant to Section 11 subsection 2, second sentence, No 1 or Section 13 subsection 3, second sentence, Nos 1 or 3, where such statutory order refers to the present criminal provision in respect of a specific offence.

The supply of sterile disposable syringes to drug-addicted persons shall not constitute procurement of an opportunity for use within the meaning of No 10 of the first sentence.

(2) In the cases mentioned in subsection 1, Nos 1, 2, 5 or 6b, the attempt shall be punishable.

(3) In especially serious cases, the sentence is imprisonment for not less than one year. An especially serious case, as a rule, exists if the offender

1. in the cases mentioned in subsection 1, No 1, 4, 5, 6, 10 or 13, acts on a commercial basis,
2. endangers the health of several human beings by one of the offences designated in subsection 1, No 1, 6 or 7
3. (dropped)
4. (dropped)

(4) If the offender, in the cases mentioned in subsection 1 Nos 1, 2, 5, 6(b) or 10 offences negligently, the punishment shall be imprisonment up to one year or a fine.

(5) The court can refrain from imposing punishment pursuant to subsections 1, 2 and 4 if the offender merely cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures or possesses narcotics in insignificant quantities for his own use.

(6) The provisions of subsection 1, first sentence, No 1, insofar as they concern trading, supplying or selling, are also to be applied if the offence relates to substances or preparations which are not narcotics, but which are presented as such.

Section 29a
Criminal offences

(1) A term of imprisonment of not less than one year shall be imposed upon anyone who

1. as a person over the age of 21 years in an unauthorised fashion supplies narcotics to a person under the age of 18 years or administers them to such a person in contravention of Section 13 subsection 1 or makes available narcotics for direct consumption, or
2. in an unauthorised fashion traffics in narcotics in a not insignificant quantity, manufactures or supplies them in appreciable quantities or possesses them without having acquired them on the basis of a licence under Section 3 subsection 1.

(2) In less serious cases the term of imprisonment shall be from three months to five years.

Section 30
Criminal offences

(1) A term of imprisonment of not less than two years shall be imposed on anyone who

1. in an unauthorised fashion cultivates, produces or trades with narcotics (Section 29, first sentence, No 1) and thereby offences as a member of a gang which has formed itself for the persistent commission of such offences,
2. in the case of Section 29a subsection 1 No 1, offences on a commercial basis,
3. supplies, administers or makes available for direct use to another and thereby negligently causes his death or
4. imports narcotics in a not insignificant quantity in an unauthorised fashion.

(2) In less serious cases, the sentence shall be imprisonment from three months up to five years.

Section 30a
Criminal offences

(1) Anyone who, in an unauthorised fashion cultivates, manufactures, traffics in or imports or exports (Section 29, first sentence, No 1) narcotics in a not insignificant quantity, and in so doing acts as member of a gang which has been formed for the persistent commission of such offences shall be punished by imprisonment for a term of not less than five years.

(2) Punishment shall also be imposed on anywone who

1. as a person over the age of 21 causes a person under the age of 18 years to traffic in narcotics in an unauthorised fashion, to import, export, sell or supply them or otherwise distribute them without trafficking therein or to encourage one of these acts, or
2. in an unauthorised fashion traffics in narcotics in a not insignificant quantity, or imports, exports or acquires them without trafficking therein and in so doing carries a firearm or other articles which by their nature likely and intended to cause bodily harm.

(3) In less serious cases, imprisonment shall be for a term of from six months to five years.

Section 30b
Criminal offences

Section 120 of the Criminal Code shall also apply when an association, whose purpose or activities are directed to the illicit traffic of narcotics within the meaning of Section 6 No 5 of the Criminal Code, does not exist or does not only exist within the domestic territory.

Section 30c
Property Fine

(1) In the cases mentioned in Section 29 subsection 1 Nos 1, 4, 5, 6, 10 and 13, Section 43a of the Criminal Code is to be applied. This shall not be the case when the offender sells, supplies, acquires or in any other way obtains narcotics without trafficking therein.

(2) In the cases mentioned in Sections 29a, 30, 30a and 30b, Section 43a of the Criminal Code is to be applied.

Section 31
Mitigation of or refraining from punishment

The court can, at its discretion, mitigate the punishment (Section 49, subsection 2 of the Criminal Code) or refrain from imposing punishment pursuant to Section 29, subsection 1, 2, 4 or 6, if the offender

1. by voluntary disclosure of his knowledge has substantially contributed to the offence being uncovered beyond his own contribution to the offence,
2. voluntarily discloses his knowledge of planned offences to an office so timely that criminal offences pursuant to Section 29, subsection 3, Section 29a, subsection 1, Section 30, subsection 1, Section 30a, subsection 1, can still be prevented.

Section 31a
Refraining from prosecution

(1) If the substance of the proceedings is an offence under Section 29, subsection 1, 2 or 4, the public prosecution office may refrain from prosecution if the offence of the offender can be regarded as minor, a criminal prosecution would not serve the public interest and the offender cultivates, produces, imports, exports, carries in transit, acquires, otherwise procures or possesses narcotics only for his own use in insignificant quantities.

(2) If the charge has already been preferred, the court may discontinue the proceedings at any stage thereof subject to the prerequisites laid down in subsection 1 above, with the consent of the public prosecution office and of the accused. The accused's consent shall not be required if the trial cannot be conducted for the reasons stipulated in Section 205 of the Code of Criminal

Procedure or if, in the cases referred to in section 231, subsection 2, Section 232 and Section 233 of the Code of Criminal Procedure, the trial is conducted in absentia. The decision shall be made by court order, which shall not be subject to appeal.

Section 32
Regulatory offences

A regulatory offence shall be committed by any person who intentionally or negligently

1. contrary to Section 4, subsection 3, first sentence, fails to report participation in the traffic in narcotics,
2. renders false statements or attaches false documents in an application pursuant to Section 7,
3. contrary to Section 8, subsection 3, first sentence, fails to report a change correctly, completely or immediately,
4. acts contrary to an executable condition pursuant to Section 9, subsection 2,
5. contrary to Section 11, subsection 1, first sentence, imports or exports narcotics without approval,
6. acts contrary to a statutory order pursuant to Section 11, subsection 2, second sentence, No 2 to 4, Section 12, subsection 4, Section 13, subsection 3, second sentence, No 2, Section 20, subsection 1, or Section 28, subsection 2, insofar as it refers to this provision for a specific set of defining elements,
7. contrary to Section 12, subsection 1, supplies narcotics or, contrary to Section 12, subsection 2, fails to certify the supply or acquisition correctly, completely or immediately or fails to acknowledge receipt,
8. contrary to Section 14, subsections 1 to 4, fails to mark narcotics in keeping with the regulations,
9. acts contrary to an executable order pursuant to Section 15, second sentence,
10. contrary to Section 16, subsection 1, fails to destroy narcotics according to regulations, to prepare a record or to keep it or, contrary to Section 16, subsection 2, first sentence, fails to send in narcotics for the purpose of destroying them, each also in conjunction with Section 16, subsection 3,
11. contrary to Section 17, subsection 1 or 2, fails to keep records correctly or completely or contrary to Section 17, subsection 3, fails to keep records or copies of invoices safely,
12. contrary to Section 18, subsections 1 to 3, fails to submit reports correctly, completely or in time,
13. contrary to Section 24, subsection 1, fails to comply with an obligation to tolerate a measure or to cooperate or
14. contrary to Section 24 a, does not report the cultivation of fibre hemp correctly, completely or in good time, or
15. mails narcotics although it is, according to the World Postal Convention or an agreement of the World Postal Association, prohibited to use postal services for that purpose; postal serecy pursuant to Article 10, paragraph 1 of the Basic Law, being resricted insofar as necessary or prosecution and punishment of the regulatory offence.

(2) The regulatory offence can be punished by a fine up to 50,000 German Marks.

(3) Administrative authority within the meaning of Section 36, subsection 1, No 1 of the Act governing Regulatory Offences is the Federal Institute for Pharmaceuticals and Medical Products insofar as the Act is implemented by that office, in cases falling under section 32 subsection 1 No. 14 the Federal Institute for Agriculture and Nutrition.

Section 33
Extended forfeiture and confiscation

(1) Section 73d of the Criminal Code shall be applied

1. in the cases mentioned in Section 29 subsection 1 Nos 1, 4, 5, 6, 10 and 13, insofar as the offender acts commercially, and
2. in the cases mentioned in Sections 29a, 30 and 30a.

(2) Property affected by a criminal offence pursuant to Sections 29 to 30a or a regulatory offence pursuant to Section 32 can be confiscated. Section 74a of the Criminal Code an Section 23 of the Regulatory Offences Act shall be applied.

Section 34
Supervision of conduct

In cases mentioned in Section 29, subsection 3, Section 29a, Section 30 and Section 30a the court can order supervision of conduct (Section 68, subsection 1 of the Criminal Code).

Chapter VII
Drug-addicted offenders

Section 35
Postponement of execution of sentence

(1) If a person has committed a criminal offence for which he is sentenced to imprisonment not exceeding two years and if the reasons for judgment reveal or it is otherwise clear that he committed the offence due to an addiction to narcotics, the authority in charge of executing the sentence shall with the consent of the court of first instance be able to postpone execution of the sentence, the remaining sentence or the measure involving commitment to an institution for curing drug addicts for not more than two years, if the convicted person is undergoing treatment for his addiction serving his rehabilitation or promises to undergo such a treatment and its commencement is guaranteed. Also considered as treatment is a stay in a state-recognized institution designed to remedy an addiction or to prevent a new addiction.

(2) In accordance with book 3, chapter 2, of the Code of Criminal Procedure, the executing authority is entitled to lodge an appeal against the refusal by the court of first instance to give consent. Under Articles 23 to 30 of the Introductory Act to the Court Constitution Act, the convicted person may appeal against such refusal only in conjunction with the rejection of postponement by the executing authority. In such event, the decision concerning refusal of consent shall also be pronounced by the Higher Regional Court; it may itself give consent.

(3) Subsection 1 shall apply accordingly if

1. aggregate imprisonment not exceeding two years has been imposed or
2. imprisonment or aggregate imprisonment exceeding two years has been imposed and if a remaining sentence or aggregate imprisonment to be executed does not exceed two years

and, additionally, if the prerequisites of subsection 1 are met for the predominant part, in terms of significance, of the criminal offences for which punishment was imposed.

(4) The convicted person is obliged to supply proof concerning the commencement and continuation of the treatment at certain dates determined by the authority in charge of execution; the persons or institutions giving the treatment shall inform the authority in charge of execution of a discontinuance of the treatment.

(5) The authority in charge of execution shall revoke the postponement of the execution if the treatment is not commenced or continued and it is not to be expected that the convicted person will commence or resume treatment of the same kind immediately, or if the convicted person does not supply the evidence required under subsection 4. It is possible to refrain from revocation of postponement if the convicted person subsequently proves that he is under treatment. Revocation pursuant to the first sentence does not stand in the way of a new postponement of the execution.

(6) The postponement of execution will also be revoked if,

1. in the case of a subsequent composition of an aggregate sentence, its execution is also not postponed pursuant to subsection 1 in conjunction with subsection 2 or
2. additional imprisonment imposed upon the convicted person or a measure of rehabilitation and prevention involving deprivation of liberty is to be executed.

(7) If the authority in charge of execution has revoked postponement, it is authorised to issue an arrest warrant for the execution of imprisonment or the commitment to an institution for curing drug addicts. A decision by the court of first instance against the revocation can be obtained. The continuation of execution is not impeded by resorting to the court. Section 462, Code of Criminal Procedure, shall apply accordingly.

Section 36
Offsetting against the sentence and suspension of the sentence on probation

(1) If execution has been postponed and if the convicted person has undergone a treatment at a state-recognized institution, the period of his stay in such an institution, for which the convicted person has to supply proof, will be offset against the sentence up to a point where, in consequence, two-thirds of the sentence will be deemed served. The decision on the possibility of offsetting is rendered by the court together with the approval pursuant to Section 35, subsection 1. If, due to the offsetting, two-thirds of the sentence are served or if treatment at the institution at an earlier date is no longer required, the court shall suspend the execution of the remaining sentence on probation as soon as it can be justified to test whether the convicted person will no longer commit criminal offences.

(2) If execution has been postponed and the convicted person has submited to treatment due to his addiction other than that designated in subsection 1, the court shall suspend the execution of imprisonment or the remaining sentence on probation as soon as it can be justified to test whether he will no longer commit criminal offences.

(3) If, after the offence, the convicted person has submitted to treatment due to his addiction, the court can order, if the prerequisites of subsection 1, first sentence, do not exist, that the period of treatment, in whole or in part, be offset against the sentence if this is indicated in consideration of the requirements made upon the convicted person by the treatment.

(4) Sections 56a to 56g of the Criminal Code, shall apply accordingly.

(5) The decisions pursuant to subsections 1 to 3 shall be taken by the court of first instance in the form of an order without an oral hearing. The agency in charge of execution, the convicted person and the persons or institutions providing the treatment are to be heard. Immediate appeal against the decisions is possible. Section 454, subsection 3, Code of Criminal Procedure, shall apply accordingly to the decisions pursuant to subsection 1, third sentence, and subsection 2; the caution concerning suspension of the remaining sentence shall be given by the court.

Section 37
Refraining from pressing of a public charge

(1) If a defendant is suspected of having committed a criminal offence due to an addiction to narcotics and if punishment not exceeding two years of imprisonment is expected, the public prosecution office can temporarily refrain from preferring charges, with the consent of the court competent to open the main proceedings, if the defendant supplies proof that he is undergoing treatment designated in Section 35, subsection 1, due to his addiction and his social rehabilitation is to be expected. The public prosecution office determines the dates on which the defendant has to supply proof of the continuation of the treatment. The proceedings will be continued if

1. the treatment is not continued until its intended completion,
2. the defendant fails to supply proof pursuant to the second sentence,
3. the defendant commits a criminal offence and thereby demonstrates that the expectation which was the basis for refraining from preferring charges has not been fulfilled or
4. on the basis of new facts or evidence, imprisonment of more than two years is to be expected.

In cases mentioned in third sentence, Nos 1 and 2 it is possible to refrain from the continuation of the proceedings if the defendant subsequently proves that he is still undergoing treatment. The offence can no longer be prosecuted if the proceedings are not continued within two years.

(2) If the charge has already been preferred the court can, with the consent of the public prosecutor, temporarily discontinue the proceedings until the end of the trial during which the factual findings can be reviewed for the last time. The decision is rendered by an incontestable court order, subsection 1, second to fifth sentencess, shall apply accordingly. The determination that the proceedings are not to be continued shall also be incontestable (subsection 1, fifth sentence).

(3) The regulations made in Section 172, subsection 2, third sentence, Section 396, subsection 2, and Section 467, subsection 5, Code of Criminal Procedure, referring to Section 153a, Code of Criminal Procedure, shall apply accordingly.